

OBJECTIVE 4.8 Identify post-litigation preparation considerations.

## **INTRODUCTION**

Given the complexity involved in performing the various law enforcement functions, the likelihood of litigation is ever present. It's no longer thought of in terms of "if" litigation will result, but "when" it occurs, will we be prepared for the total experience? Being aware of the basic needs that will contribute to a defensible position and accurately supporting the actions or lack of response is critical to prevailing when you are held accountable in a court of law.

## **CONTENT**

Areas that are critical to litigation preparation:

1. Documentation
2. Post-incident planning
3. Active communication
4. Psychological aspects
5. Litigation follow-up

## **DOCUMENTATION**

1. To adequately protect and defend the actions of agencies and individuals carrying out the policies of that entity, a standard practice of complete and accurate incident reporting is essential.
2. Should additional evidence or information become available, add by way of supplemental reporting, not by deletion of original reports.

**POST-INCIDENT PLANNING**

During the post analysis review of each incident, the likelihood of litigation should be openly discussed with all involved.

1. Review all documentation and supporting information/material, and protect the continued availability and integrity of all associated information.
2. Should an incident be litigated, would there be a need for additional information or follow-up investigations? (If yes, based on a prioritized likelihood of litigation, immediate attention should be given to follow-up.)
3. Review the existing policy to make sure all involved have a good working knowledge.

Officers involved must be able to reconstruct the incident in terms of the policy's operational aspects.

4. Create a litigation preparation checklist. As part of your post planning, you should summarize by creating an inventory listing of all relative and supporting information.
  - a. Policy
  - b. All reports (include all follow-up activity)
  - c. Photographs, measurements, diagrams
  - d. Dispatch tapes/transcripts
  - e. Video tapes/video re-creations
  - f. Criminal dispositions
  - g. Press releases/coverage
  - h. Summary of post-incident analysis
  - i. Witness list
  - j. Interviews/statements

- k. Physical evidence log
- l. Identification of all agencies and officers involved

### ACTIVE COMMUNICATION

Make sure all affected parties are given notice about the likelihood of litigation. Too many times officers, legal counsel, and risk-management insurers are left in the dark. They may not even know the agency is looking into the incident, much less that there is a good chance of a lawsuit being filed.

1. Official communication with all agency personnel effected that brings notice of the likelihood of litigation.
  - a. Line officers
  - b. Supervisors
  - c. Administrators
2. Consult with the appropriate legal counsel handling the agency's legal affairs.
  - a. Interaction with legal counsel may require a need for additional follow-up or review to ensure a defensible position exists.
  - b. Prepare officers for participation in the deposition process and explain what to expect in civil litigation proceedings.
3. Contact with the agency's risk management/insurance carrier will allow preliminary work to begin that can assist in post litigation planning. Resources available at this level will allow for additional follow-up and guidance on defense needs.

### PSYCHOLOGICAL ASPECTS

Dealing with litigation can be very stressful and officers will be challenged and exposed, both professionally and emotionally.

1. The uncertainty and length involved in lawsuits requires active, ongoing communication and preparation to reduce the normal stress that undoubtedly will be present.

2. In many cases involving serious injuries or deaths, an officer can hide psychological effects until forced to relive the situation through the litigation process.
  - a. Deal with post-incident trauma immediately in post review analysis
  - b. Officers should not be reluctant to seek professional assistance in dealing with their feelings.
  - c. Officers are generally caring human beings and should not be ashamed to show emotions when describing a tragic situation.

### **LITIGATION FOLLOW-UP**

The outcome of litigation should be immediately communicated to all parties involved. Many officers take lawsuits personally, and there may be a need to review current policy and practices to better manage the risks in the future.

1. When cases are settled out-of-court, communicate details and reasons why the decision was made.
2. Whether the judgment is for or against the agency and officers, there is always the need to reflect on current policies and practices in light of the court's/jury's findings.
  - a. What may have been believed to be a reasonable response is found to be unacceptable.
  - b. The total experience can remain positive when necessary change occurs, and future actions will be able to withstand scrutiny under similar situations.

### **SUMMARY**

When agencies and officers are aware of the litigation defense needs and remain prepared, the experience will be less intimidating and result in success more often in a court of law. Special attention to the psychological aspects associated with legal challenges and post-incident emotional trauma will greatly assist your overall efforts in this area.

### **SUGGESTED INSTRUCTIONAL METHODOLOGY**

#### **SMALL GROUPS**

Divide the class into small groups allowing for the opportunity to review actual pursuit case summary files that have resulted in litigation. The focus of the review will be on adequacy of the defense from the standpoint of officers as witnesses, agency's policies, and reporting.

**LECTURE WITH GUEST SPEAKER**

Using a legal representative and risk managers, review the content of post-litigation preparation considerations. Emphasis of the presentation would be on awareness of the civil litigation process and the demands it will have on individual officers.

**RESOURCES AND AIDS**

1. State statutes
2. Agency policies
3. Experience of veteran officers
4. Pursuit case summary files
5. Depositions resulting from civil litigation in the pursuit area

**SUGGESTED EVALUATION METHODOLOGY****STUDENTS**

1. Observations of student's reactions to actual case summaries, legal decisions, and post-analysis requirements
2. Review student's case preparation check-list to verify an understanding of the requirements for defensible documentation and information trail

**COURSE**

1. Review of agency emergency/pursuit response data.